



6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities; Notice of Intent to Renew Collection: Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) seeks public comment on the proposed renewal of a collection of information by the agency. Under the Paperwork Reduction Act (PRA), Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to requests for and issuance of exemptive, no-action, and interpretative letters.

DATES: Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by “Collection 3038-0049-Renewal,” by any of the following methods:

- The Agency’s web site, at <http://comments.cftc.gov/>. Follow the instructions for submitting comments through the web site.
- Mail: Melissa D. Jurgens, Secretary of the Commission,
Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st
Street, NW, Washington, DC 20581.

- Hand Delivery/Courier: Same as mail, above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to www.cftc.gov.

FOR FURTHER INFORMATION CONTACT: Christopher W. Cummings, Special Counsel, Division of Swap Dealer and Intermediary Oversight, (202) 418-5228, e-mail: ccummings@cftc.gov; Jocelyn Partridge, Special Counsel, Division of Clearing and Risk, (202) 418-5926, e-mail: jpartridge@cftc.gov; Riva Spear Adriance, Senior Special Counsel, Division of Market Oversight, (202) 418-5494, e-mail: radriance@cftc.gov; or Beverly E. Loew, Assistant General Counsel, Office of General Counsel, (202) 418-5648, e-mail: bloew@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3. The definition includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Sections 3506(c)(2)(A) and 3507(h) of the PRA, 44 U.S.C. 3506(c)(2)(A) and 3507(h), require a Federal agency to provide a 60-day notice in the Federal Register whenever it seeks to renew a collection of information previously approved by OMB, seeking public comment before submitting the collection to OMB for renewal. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

Abstract: This collection covers the procedural requirements for requests for, and issuance of, interpretative, no-action, and exemptive letters according to the provisions of section 140.99 of the Commission's regulations.¹ The current collection, for which a three-year extension is being sought, has been assigned OMB control number 3038-0049. The collection requirements contained herein are voluntary. The requirements are observed by parties that wish to apply most frequently for a benefit from agency staff in the form of regulatory relief described in section 140.99. Relief sought often relieves the persons obtaining it from some or all of the burdens associated with other collections of information.

Burden Statement: There has been an increase in requests for no-action and interpretive letters in particular, following the implementation of the Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") by the Commission. Accordingly, as elaborated below, the burden hours for this collection are being increased from the last renewal of this collection.

The burden increase is related to several factors. First, there have been an increased number of respondents for this collection in the form of requestors that must comply with the collection requirements contained in section 140.99 in order for the request to be considered by staff.

Second, burden increase is attributable to collection requirements contained within issued exemptive and no-action letters providing regulatory relief. Historically, most exemptive, no-action, and interpretive letters were sought by and issued to an individual party (or fewer than ten persons) that may have been subject to discrete

¹ 17 CFR 140.99. An archive containing CFTC staff letters may be found at <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/index.htm>.

collections of information in a letter in order to obtain the benefit of it, which collections were excepted from the application of the PRA. Since the implementation of the Dodd-Frank Act, however, these letters more frequently have been sought by and issued to large groups of similarly situated persons, typically to entire industries or industry subgroups. Because of the increase in respondents, the PRA exception is not applicable to this proposed renewal.

Thus, the proposed renewal accounts for relief issued by staff under regulation 140.99 that contain information collections, which often involves providing notice and certifications to the division or office staff issuing the letter. The proposed renewal also accounts for relief from compliance with an existing collection of information, and occasionally from a regulatory obligation that does not contain a collection of information, with substituted compliance obligations in the form of an information collection in the letter providing the relief.

Third, there has been an increase in burden attributable to adding collection requirements into this collection that are related to this collection, such as compliance with requirements for requesting confidential treatment of letters that may be granted under section 140.98 of the Commission's regulations, but could be effected through separate collections. It was determined not to establish separate collections for the related matters in order to streamline the analysis, compliance, and renewal processes for the Commission and all entities that may submit requests for exemptive, no-action, and interpretive letters that include burden associated with the related matters.

Therefore, in order to establish estimates with respect to no-action and exemptive letters that may be issued during the 3-year renewal period for which the Commission is

applying, a sampling was taken of exemptive and no-action letters over a six month period from December 4, 2012, through June 4, 2013. This time period was chosen because it is believed that it reasonably represents the shift in the manner in which these letters are sought and issued since the last renewal of this collection of information.

During this period, encompassing no-action letters 12-40 through 13-22, 58 no-action letters were issued. Thirty contained no collections of information, or collections that do not require an OMB control number, for example because they involved the submission of information by fewer than 10 persons,² or they involved notice filings solely requiring a respondent to identify itself as relying on the relief, which notice is not considered to be an information collection under the PRA.³ Twenty-eight contained collections of information, a number of which require certification requirements that will permit monitoring for compliance with statutory or regulatory requirements not subject to the relief issued.⁴

Other contained substituted compliance obligations in the form of collections that were intended to be no more burdensome than the collection requirements provided for in the regulations, from which the no-action letters provided relief. Of the few letters that contained conditions allowing for substituted compliance that included a collection of information but relieved regulatory burden not associated with a collection of information, the increased collection burden was offset by the overall decrease in collection burden resulting from other letters issued pursuant to section 140.99. Nonetheless, to ensure flexibility over the next three years, burden hours were estimated to cover circumstances in which a collection contained in a no-action or exemptive letter

² See, e.g., 44 U.S.C. 3502(3)(A)(1).

³ See, e.g., 5 CFR 1320.3(h)(1).

⁴ Id.

may add to, rather than offset or decrease, regulatory burdens containing collections of information.

Finally, although there has been an increase in requests for no-action relief and interpretive letters, Commission staff does not anticipate that this increase will be permanent. Thus, burden estimates have been bifurcated. Burden hours have been estimated at an increased level for the first year following the renewal of this collection, and then pared for the second and third years, so as not to artificially inflate the Commission's burden budget, or the burden budget that is maintained government-wide by OMB.

Past experience was used to estimate the number of no-action, interpretive, and exemptive letters that may be received over the three-years for which this renewal is being sought. The number of letters received over the past five years are as follows:

<u>Letters Issued</u>	<u>No-Action</u>	<u>Interpretive</u>	<u>Exemptive</u>
2013	64	0	0
2012	70	1	11
2011	8	0	1
2010	9	23	4
2009	11	35	3

Burden Estimates. For the proposed renewal period, the respondent burden calculated with consideration to past experience is estimated to be 28,478 hours. These estimates include burden hours for complying with the information requirements for exemptive, no-action, and interpretative letters contained in section 140.99(c) of the Commission's regulations, effecting filing as provided in section 140.99(d), providing notice of material change in circumstances that may affect any relief granted pursuant to section 140.99(e), and complying with notice and other conditions that may be contained in grant of exemptive or no-action relief issued by staff; and preparing and submitting

withdrawals of requests for exemptive, no-action, and interpretative letters pursuant to section 140.99(f). The estimates also include burden hours for preparing a confidential treatment request pursuant to and responding to any process contained in associated section 140.98(b) of the Commission's regulations, and complying with the documentation requirements contained in section 41.3(b), related to exemption requests from certain intermediaries.

Respondents/Affected Entities: Registered entities, intermediaries, eligible contract participants, parties clarifying their status as such or seeking relief from registration or discrete regulatory burdens associated with their status.

Estimated number of respondents: 12,428.

Estimated total annual burden on respondents: 28,478 hours.

Frequency of collection: Occasionally.

The Commission estimates the burden of this collection of information as follows:

	<u>ESTIMATED ANNUAL RESPONDENTS OR RECORDKEEPERS</u>	<u>REPORTS OR RECORDS ANNUALLY - EACH RESPONDENT</u>	<u>TOTAL ANNUAL RESPONSES</u>	<u>ESTIMATED AVERAGE NUMBER OF HOURS PER RESPONSE</u>	<u>ESTIMATED ANNUAL BURDEN HOURS</u>
<u>REPORTING -- RENEWAL YEAR ONE</u>					
§ 140.99 (c) - information requirements for letters	40	1	40	9.00	360
§ 140.99(d) - filing requirements	40	1	40	0.38	15
§ 140.99(e) - staff response					
change of facts and circumstances	7	1	7	2.25	16
notice and other conditions	4,500	1	4,500	1.50	6,750
§ 140.99(f) - withdrawal of requests	6	1	6	0.75	5
§ 140.98(b) - confidential treatment requests	5	1	5	1.80	9

	<u>ESTIMATED ANNUAL RESPONDENTS OR RECORDKEEPERS</u>	<u>REPORTS OR RECORDS ANNUALLY - EACH RESPONDENT</u>	<u>TOTAL ANNUAL RESPONSES</u>	<u>ESTIMATED AVERAGE NUMBER OF HOURS PER RESPONSE</u>	<u>ESTIMATED ANNUAL BURDEN HOURS</u>
§ 41.3(b) - securities brokers and dealers requesting exemptive orders; documentation requirement	10	1	10	3.75	38
<u>REPORTING -- YEARS TWO AND THREE</u>					
§ 140.99 (c) - information requirements for letters	25	1	25	9.00	225
§ 140.99(d) - filing requirements	25	1	25	0.38	9
§ 140.99(e) - staff response					
change of facts and circumstances	4	1	4	2.25	9
notice and other conditions	1,500	1	1,500	1.50	2,250
§ 140.99(f) - withdrawal of requests	3		0		0
§ 140.98(b) - confidential treatment requests	3	1	3	1.80	5
§ 41.3(b) - securities brokers and dealers requesting exemptive orders; documentation requirement	10	1	10	3.75	38
<u>SUBTOTAL REPORTING</u>	<u>6,178</u>	<u>13</u>	<u>6,175</u>	<u>38</u>	<u>9,728</u>
<u>RECORDKEEPING -- RENEWAL YEAR ONE</u>					
§ 140.99(e) - staff response					
notice and other conditions	4,500	4	18,000	0.75	13,500
<u>RECORDKEEPING -- RENEWAL YEARS TWO AND THREE</u>					
§ 140.99(e) - staff response					
notice and other conditions	1,750	4	7,000	0.75	5,250

	<u>ESTIMATED ANNUAL RESPONDENTS OR RECORDKEEPERS</u>	<u>REPORTS OR RECORDS ANNUALLY - EACH RESPONDENT</u>	<u>TOTAL ANNUAL RESPONSES</u>	<u>ESTIMATED AVERAGE NUMBER OF HOURS PER RESPONSE</u>	<u>ESTIMATED ANNUAL BURDEN HOURS</u>
<u>SUBTOTAL RECORDKEEPING</u>	<u>6,250</u>	<u>8</u>	<u>25,000</u>	<u>2</u>	<u>18,750</u>
GRAND TOTAL	<u>12,428</u>	<u>21</u>	<u>31,175</u>	<u>40</u>	<u>28,478</u>

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of requests for such letters in the last three years. Although the burden varies with the type, size, and complexity of the request submitted, such request may involve analytical work and analysis, as well as the work of drafting the request itself.

Comment Solicitation: With respect to this collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Dated: December 23, 2013.

Christopher J. Kirkpatrick,
Deputy Secretary of the Commission.

[FR Doc. 2013-31106 Filed 12/27/2013 at 8:45 am; Publication Date: 12/30/2013]